Supreme Court, U. S.
FILED
JUN 22 1972
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term 1971

No. 71-1463

WILLIAM G. MILLIKEN Governor of the State of Michigan, et al.,

Petitioners,

vs.

RONALD BRADLEY, et al.,

Respondents.

REPLY AND SUPPLEMENTAL BRIEF

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Eugene Krasicky
Assistant Attorney General
Attorneys for Petitioners

Business Address:
Law Building
525 West Ottawa Street
Lansing, Michigan 48913

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN — 1972

TABLE OF CONTENTS

Introduction 1

Additional Reasons for the Grant of Certiorari 1

Relief 6

AUTHORITIES CITED

Swann v. Charlotte-Mecklenburg Board of Education, 402 US 1, 16 and 24 (1971) 4

Const 1963, Art IV, Sec. 30 5

Art IX, Sec. 17 5

In The

SUPREME COURT OF THE UNITED STATES

October Term 1971

No. 71-1463

WILLIAM G. MILLIKEN Governor of the State of Michigan, et al.,

Petitioners,

vs.

RONALD BRADLEY, et al.,

Respondents.

REPLY AND SUPPLEMENTAL BRIEF

INTRODUCTION

The petitioners believe arguments raised in the brief in opposition to the petition for certiorari have been eroded by subsequent events and, therefore, it is petitioners' duty to bring these developments to the attention of the Court.

ADDITIONAL REASONS FOR THE GRANT OF CERTIORARI

I.

On June 14, 1972 the district court issued its "FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF RULING ON DESEGREGATION AREA AND DEVELOPMENT OF PLAN" and entered its order entitled

"RULING ON DESEGREGATION AREA AND ORDER FOR DEVELOPMENT OF PLAN OF DESEGREGATION." These documents are contained in the supplemental joint appendix filed by petitioners and respondent intervening school districts. References herein are references to the pages of the supplemental joint appendix unless otherwise indicated. Again the orders are couched in "non-final" terms but set in motion events which would prevent effective review of same until the entire controversy has become a fait accompli.

We believe the district court is in good faith in its attempt to achieve integration of the Detroit school system. However, we vigorously assert that the procedures and methods employed by the Court are in derogation of existing law and that there is no basis for decreeing relief in the manner and to the enormous extent contemplated by the district court.

II.

The order entered on June 14, 1972 effectively compels the implementation of a massive metropolitan busing remedy prior to any appellate review on the questions of de jure segregation and the propriety of a metropolitan remedy. This order clearly puts to rest the contentions of plaintiffs-respondents concerning the lack, to date, of any significant decrees by the district court and petitioners ability to seek a stay and timely appellate review prior to implementation of the "final" remedial order of the district court.

The grave error of the district court is related by the court itself when in the second sentence of its opinion the court says:

> ". . . It should be noted that the court has taken no proofs with respect to the establishment of the

boundaries of the 86 public school districts in the counties of Wayne, Oakland and Macomb, nor on the issue of whether, with the exclusion of the city of Detroit school district, such school districts have committed acts of de jure segregation." (1aa, 2aa)

Yet, the "desegregation area" chosen by the court includes Detroit and 52 other school districts. Moreover, 18 of these school districts are not even parties to the litigation. It is respectfully submitted that the equitable powers of the district court do not reach these 18 school districts.

The district court's order plainly requires, within the judicially chosen "desegregation area" of 53 school districts, that at a minimum, a desegregation plan be prepared and implemented for the fall 1972 term including grades K-6, K-8, or K-9 in all or in as many clusters as practicable. This will occur less than 90 days from the date hereof. Complete and final desegregation must be accomplished no later than the fall 1973 term. Thus, for the fall 1972 term, there will be an "interim plan" with a "final plan" to be included in a subsequent "final order." (42aa, 43aa, 47aa). Petitioners are compelled to assert that the district court's piecemeal relief process will make large scale metropolitan busing an accomplished fact prior to appellate review.

As to faculty and staff, the district court found no de jure segregation in the Detroit public schools on this issue in its "Ruling on Issue of Segregation" on September 27, 1971. In fact, at that time the court praised the exemplary conduct of the Detroit school board and the intervening defendant union in the area of faculty and staff (14a-19a of petitioners' original appendix). Yet, in its remedial injunctive order of June 14, 1972 the court decreed:

". . . In the context of the evidence in this case, it is

appropriate to require assignment of no less than 10% black faculty and staff at each school, and where there is more than one building administrator, every effort should be made to assign a bi-racial administrative team." (45aa).

Patently, this demonstrates that, contrary to the explicit commands of this court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 US 1, 16 and 24 (1971), the district court, in the absence of any finding of a constitutional violation as to faculty and staff, has decreed an impermissible fixed racial balance quota for each school within the 53 school districts. Based on judicial speculation of a desirable racial balance, many teachers in the metropolitan area will be required to teach in new schools and school districts in the fall irrespective of their presently existing contractual rights.

III.

The scope of the remedial injunctive order entered on June 14, 1972 also extends to racial balance in future school construction and expansion and modification of existing administrative, financial, contractual, property and governance arrangements as required to effectively operate a desegregated school system within the 53 school districts. (45aa, 46aa) The lower court has ordered the Superintendent of Public Instruction, with assistance from the other state defendants, to make recommendations to the court for interim and final arrangements in each of the areas of school district administration set forth above. (46aa, 47aa) In addition, the Superintendent of Public Instruction has been expressly ordered to recommend what he deems necessary to achieve the objectives of the court's order in these areas independently of what state law provides in each of these areas. (46aa, 47aa).

On the question of financing the metropolitan remedy, the district court has ruled that funds must either be raised or reallocated, where necessary, to secure plaintiffs' constitutional rights. (36aa). Further, the state defendants have been ordered to bear the costs of the nine member panel appointed by the court to design interim and final plans. (42aa). Simply put, the state defendants do not possess the power of the purse under Michigan law. The power to lawfully appropriate state funds under Michigan law is reposed in the Michigan Legislature. Const 1963, Art IV, Sec. 30:

> "The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes."

Art IX, Sec. 17:

> "No money shall be paid out of the state treasury except in pursuance of appropriations made by law."

Petitioners have no authority to expend funds without legislative approval and the legislature is not a party to this cause. Thus, the district court has assumed the role of final arbiter over school district finance and state funds for 53 school districts.

The necessity of this Court's passing upon the three questions raised by the petition for certiorari are vividly illustrated by several aspects of the district court's most recent "non-final" opinion and order. This opinion and order are truly remarkable in terms of the slender foundation, indeed a foundation of sand, upon which the lower court has erected a 53 district metropolitan desegregation edifice covering all aspects of the educational process.

To conclude, the time has come for this Court to take jurisdiction of this cause and pass upon the three questions raised in the petition for certiorari. A metropolitan desegregation remedy involving the busing of hundreds of thousands of school children, the relocation of thousands of teachers, and the disruption of the educational programs of 53 separate districts, involving some 800,000 students must not be implemented prior to final appellate review by this Court. (See Exhibit A indicating areas affected by the district court orders.)

RELIEF

For the aforegoing reasons, a writ of certiorari should issue to review the judgment of the Sixth Circuit and this Court should assume jurisdiction to determine the three questions raised in the petition for certiorari prior to the implementation of the metropolitan remedy in this cause.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

ROBERT A. DERENGOSKI /s/
Robert A. Derengoski
Solicitor General

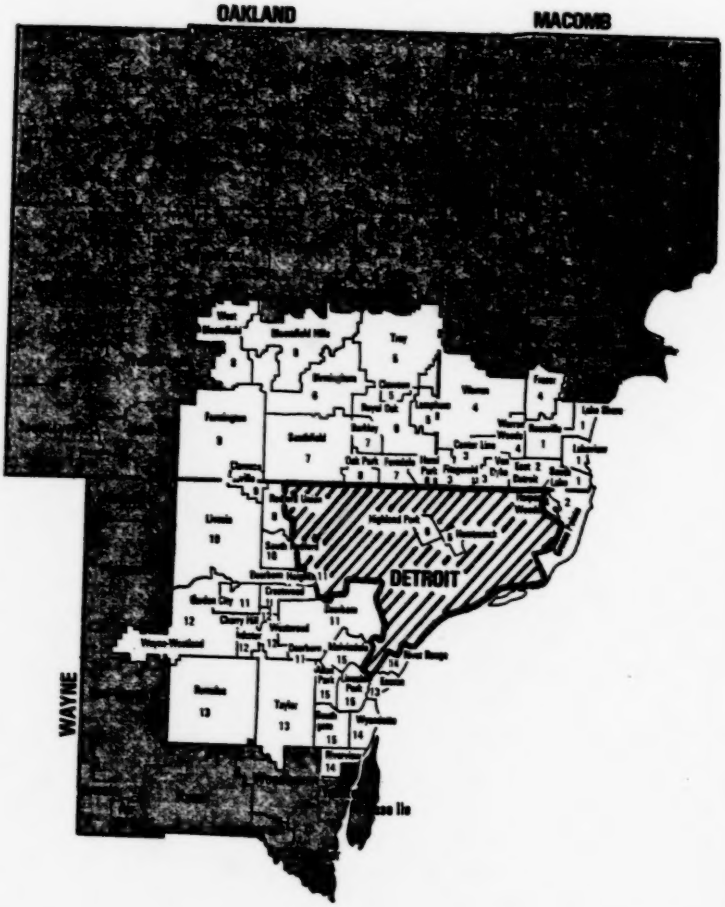
Eugene Krasicky
Assistant Attorney General

Attorneys for Petitioners

Business Address:
Law Building
525 West Ottawa Street
Lansing, Michigan 48913

Dated: June 16, 1972

EXHIBIT A



Note: Area designated by diagonal lines indicates present Detroit School District.
Area in white indicates school districts to be affected by Judge Roth's orders.